

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RONALD HAYES,

Petitioner,

-against-

JAMES CONWAY, Superintendent,
Attica Correctional Facility,

Respondent.

08-cv-5280 (ARR)

NOT FOR PRINT
OR ELECTRONIC
PUBLICATION

ORDER

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ROSS, United States District Judge:

On December 26, 2008, pro se petitioner Ronald Hayes filed the instant petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, asserting that (1) the trial court committed an error pursuant to Batson v. Kentucky, 476 U.S. 79 (1986); (2) the trial court erred during sentencing by considering facts other than petitioner's prior convictions; (3) the court's ruling under People v. Sandoval, 34 N.Y.2d 371 (1974), was improper and deprived him of a fair trial; and (4) he suffered from ineffective assistance of trial counsel. In letters to the court filed on December 26, 2008, July 2, 2009 and September 2, 2009, petitioner requested to hold his petition in abeyance to permit petitioner to pursue a motion to vacate pursuant to C.P.L. § 440.10 and an Article 78 proceeding. Petitioner's C.P.L. § 440.10 was denied on July 15, 2009, and his application for leave to appeal to the New York Court of Appeals was denied on November 19, 2009. On January 6, 2010, I issued an order directing petitioner to show cause as to how his exhausted C.P.L. § 440.10 claims related to the claims asserting in his original petition, and to

inform the court about the claims asserted in his Article 78 proceedings. (Jan. 26, 2010 Order, Dkt. No. 13.)

Petitioner's response was filed on February 8, 2010. (Dkt. No. 14.) In his Article 78 motion, petitioner argues that the New York State Department of Correctional Services denied him his right to have his present sentence run concurrently with prior undischarged terms. (Pet.'s Article 78 Mot., Dkt. No. 14 at 24.) Petitioner states that this claim is currently before the Appellate Division, and is thus not exhausted. (Dkt. No. 14 at 3.)

Because respondent now has notice of petitioner's Article 78 proceeding, respondent is directed to address within twenty (20) days petitioner's claim under his Article 78 proceeding, including (1) whether his claim "relates back" to petitioner's original petition, and (2) assuming petitioner's claim does "relate back," whether the claim has merit such that a stay is warranted under Rhines v. Webber, 544 U.S. 269.

SO ORDERED.

/S/

Allyne R. Ross
United States District Judge

Dated: April 19, 2010
Brooklyn, New York

Service List:

Petitioner (Pro Se):

Ronald Hayes

02-A-4085

Elmira Correctional Facility

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Respondent:

Merri Turk Lasky

Queens County District Attorney

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